

MEMORANDUM

Agenda Item No. 8(H)(2)


TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 5, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving Mutual
Cross-Access agreement between
Miami-Dade County and
Hammocks Community
Association Inc. for the use,
security and maintenance of
certain county lands with Wild
Lime Park

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Juan C. Zapata.



R. A. Cuevas, Jr.
County Attorney


RAC/jls

Memorandum



Date: November 5, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
County Mayor 

Subject: Wild Lime Park
Mutual Cross-Access Agreement and Easement

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving the Mutual Cross-Access Agreement for the Hammocks Community Association Inc. (Hammocks) to use, secure and maintain certain County lands within Wild Lime Park; approve an access easement in support of such use; authorize the County Mayor or Designee to execute the Agreement and take any necessary and related subsequent actions; and for the Mayor to execute the easement on behalf of Miami-Dade County.

Scope

Wild Lime Park, an 11-acre local community park, is located at 14751 Hammocks Boulevard within County Commission District 11, Commissioner Juan C. Zapata.

Fiscal Impact/Funding Source

The Hammocks Community Association Inc. agrees to assume all costs associated with use, security, and maintenance of the shared portion of the existing County parking lot. There is no fiscal impact to the County from this Agreement and Easement.

Track Record/Monitor

Randy Koper, Property Management Section of the Parks, Recreation and Open Spaces Department (PROS), will monitor compliance of the Agreement and Easement.

Background

Pursuant to Resolution No. R-4-ZAB-368-87, Genstar, the developer of the Hammocks Community, was required to prepare and record a Cross Parking and Cross Access Agreement (Agreement) to allow a private facility to use the entrance and parking of an adjacent public property. Following County consent of this arrangement, Genstar was allowed to construct the private Wild Lime Center for the Hammocks Community and rely on certain County lands for parking and access, all at their sole cost. Although the Agreement was not found to have been recorded, Genstar was permitted in 1990 to complete development of the recreation center on private property and parking improvements on the public property.

Construction of the Wild Lime Park did not commence until after 2008, and it did not become apparent to either party that the absence of an Agreement was a problem until early 2009. At that time, it was mutually determined that the lack of a recorded agreement allowed unapproved private use of public

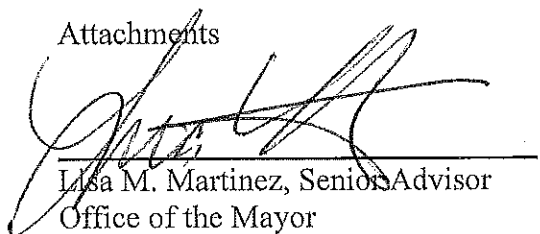
property, confused residents and Wild Lime Park visitors regarding permissible parking, created security issues within the park and exposed the County to unnecessary liability.

The purpose of the Mutual Cross-Access Agreement (Exhibit A) is to:

- Comply with the prior zoning order requiring that a parking and access agreement allow for private use of public land.
- Provide for unrestricted parking use by County and Hammocks residents within combined parking lots.
- Provide how the Hammocks Community Association, Inc. will assume security and maintenance responsibilities for certain County lands.
- Establish that the Hammocks Community Association Inc. will meet certain insurance and indemnification requirements that are consistent with County Risk Management specifications.

The purpose of the Easement (Exhibit B) is to permanently allow private vehicular access across public County land so that Hammocks residents can freely access their private facility.

Attachments



Lisa M. Martinez, Senior Advisor
Office of the Mayor




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 5, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(H)(2)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(H)(2)
11-5-13

RESOLUTION NO. _____

RESOLUTION APPROVING MUTUAL CROSS-ACCESS AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HAMMOCKS COMMUNITY ASSOCIATION INC. FOR THE USE, SECURITY AND MAINTENANCE OF CERTAIN COUNTY LANDS WITHIN WILD LIME PARK; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TAKE ALL NECESSARY AND RELATED SUBSEQUENT ACTIONS; APPROVING AN ACCESS EASEMENT AND AUTHORIZING COUNTY MAYOR TO EXECUTE IT IN SUPPORT OF THE AGREEMENT ALL ON BEHALF OF THE COUNTY

WHEREAS, pursuant to Resolution No. R-4-ZAB-369-87 dated September 23, 1987 Miami-Dade County ("County") and Hammocks Community Association Inc. ("Hammocks") were to have entered into a Cross Parking and Cross Access Agreement ("Agreement") for the access and use of certain parking within Wild Lime Park, a County park, as a condition of occupancy approval; and

WHEREAS, there was no record found that the Agreement was ever completed; and

WHEREAS, the County and Hammocks now desire to establish an Agreement to provide for private access and use of public land through a Mutual Cross-Access Agreement (attached hereto as Exhibit "A") and for the County to provide an access easement (attached hereto as Exhibit "B") in support of this access,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Mutual Cross-Access Agreement between the County and Hammocks for the Hammocks to use, secure and maintain certain parking areas of Wild Lime Park; approves a vehicular access easement affording Hammocks residents access to private lands; authorizes the County Mayor or Designee to execute the Agreement and take all necessary and related subsequent actions; and the County Mayor to execute the Easement on behalf of the County all in substantial accordance with this Resolution.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of November, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

Attachment A
Mutual Cross-Access Agreement

**MUTUAL CROSS-ACCESS AGREEMENT
BETWEEN THE HAMMOCKS COMMUNITY ASSOCIATION AND
MIAMI-DADE COUNTY**

This Cross Access Agreement ("Agreement") is made as of the _____ day of _____, 2013, by and between Hammocks Community Association, Incorporated, a Florida non-profit organization ("HAMMOCKS") and Miami-Dade County, a political subdivision of the State of Florida (the "COUNTY"),

RECITALS:

WHEREAS, HAMMOCKS Wild Lime Center is located at 11450 SW 147th Avenue, Miami, Florida 33196 (Exhibit "1"); and,

WHEREAS, the original developer of the Hammocks residential community, Genstar Development, owned all the land within the HAMMOCKS development; and

WHEREAS, as a Development of Regional Impact (DRI), Genstar Development designated specific parcels of land for public schools, police, parks, and public works, so as to facilitate the infrastructure needs of the community; and,

WHEREAS, as the development of Hammocks residential community progressed, the HAMMOCKS Wild Lime Center was constructed on Tract C, Parkside at Hammocks, Record Book 131, Page 71, of the Official Records Book of the County (Exhibit "1"), and Hammocks Wild Lime Park ("Wild Lime Park"), was constructed on Tract B, Parkside at Hammocks, Record Book 131, Page 71, of the Official Records Book of the County (Exhibit "1"), and was transferred to COUNTY for the purpose of addressing certain Park infrastructure needs; and,

WHEREAS, the County Zoning Department (the "Zoning Department") approved development of HAMMOCKS' recreational facilities known as Wild Lime Center on Tract C located at HAMMOCKS Premises, including a club house, swimming pool, tennis court, and 24 parking spaces; and,

WHEREAS, the Site Plan submitted by the developer and approved by the COUNTY (Resolution 4-ZAB-368-87) for HAMMOCKS Wild Lime Center is attached as Exhibit "2"; and,

WHEREAS, there are 34 parking spaces located within Tract B which primarily serve the parking needs of Wild Lime Park, also located on Tract B (Exhibit "3"); and,

WHEREAS, it would be beneficial to County residents utilizing Wild Lime Park, located at 14751 Hammocks Blvd., Miami, FL 33186, to be allowed to use the 24 parking spaces belonging to HAMMOCKS located on Tract C and specifically delineated in the in Exhibit "4"; and,

WHEREAS, it would also be beneficial to HAMMOCKS residents utilizing the Wild Lime Center to be able to use the existing 34 and additional proposed parking spaces on Tract B, as specifically delineated in Exhibit "4",

NOW, THEREFORE, for the consideration of ten dollars (\$10.00) and the mutual covenants contained in this Agreement, the receipt and legal sufficiency of which is acknowledged, the parties agree as follows:

ARTICLE I
REAL PROPERTY TO BE ACCESSED BY COUNTY AND THE HAMMOCKS

A. County

- (1) Parking. COUNTY shall allow HAMMOCKS, its owners/residents their guests and invitees along with its licensees, agents, successors and assigns, the non-exclusive right to use thirty-four (34) COUNTY parking spaces on Tract B ("Existing Parking Area"), and the non-exclusive right to use the entrance from SW 147th Avenue on COUNTY Premises to access HAMMOCKS Premises. This same right of use shall extend to the planned twenty-two (22) space expansion of the COUNTY Premises parking area by COUNTY ("Proposed Parking Area"). The Proposed Parking Area together with the Existing Parking Area shall hereinafter be referred to as the COUNTY Premises. The parking area as described herein is more specifically delineated in the attached site plan, which site plan is adopted and incorporated by reference as Exhibit "4".
- (2) Fence. COUNTY shall allow HAMMOCKS access onto Wild Lime Park so as to allow HAMMOCKS to install, maintain, operate, relocate and remove its fence, located solely on HAMMOCKS property. The location of HAMMOCKS' fence is depicted in attached Exhibit "5". HAMMOCKS shall provide the COUNTY with at least ten (10) days' prior written notice of any needed installation, maintenance, operations, relocations and removal to or of its fence, and the COUNTY shall have the right to reasonably postpone any such installation, maintenance, operations, relocations and removal, provided that any such denial or postponement is for reasonable cause. In the event of an emergency situation, where obtaining such prior written consent from the COUNTY may result in possible harm and/or liability, HAMMOCKS shall provide concurrent or prior notice to the COUNTY park manager or COUNTY park manager's office prior to resolving the emergency situation.
- (3) Easement. County shall allow and shall grant to HAMMOCKS a permanent vehicular and pedestrian access easement ("Easement") through County lands to afford area owners/residents their guests and invitees, along with licenses, agents and successors, with access to the private Wild Lime Center specifically delineated in Exhibit "6". This Easement shall survive termination of this Agreement and shall be duly recorded within the Miami-Dade County Property Records. A copy of the Easement has been attached hereto, and is incorporated herein by reference as Exhibit "6".

B. Hammocks

HAMMOCKS shall allow the COUNTY the non-exclusive right to use the twenty four (24) Association parking spaces on Tract C ("HAMMOCKS Premises"). The non-exclusive parking area as described herein is more specifically delineated in the attached site plan, which site plan is adopted and incorporated by reference as Exhibit "3".

ARTICLE II TERM AND RENEWALS

This Agreement shall commence upon execution after the Board of County Commissioners approval, which date shall be confirmed in writing by the parties and made part of this Agreement by reference (the "Commencement Date"), and shall terminate ten (10) years thereafter. This Agreement shall be automatically renewed for successive ten (10) year terms unless the parties are in default of the conditions of the Agreement without cure, or choose to terminate same, all pursuant to Article VII.

ARTICLE III IMPROVEMENTS AND MAINTENANCE

A. County

Any parking lot improvements by the COUNTY on COUNTY Premises shall be maintained in a safe condition at all times by COUNTY. A standard park sign, in accordance with the approved Miami-Dade County Park and Recreation Department Sign Manual, shall be installed by COUNTY at the driveway entrance from SW 147th Avenue informing Wild Lime Park and HAMMOCKS Wild Lime Center patrons of their ability to park in the Joint Premises parking lot.

B. Hammocks

Improvements to HAMMOCKS Premises by the HAMMOCKS shall be maintained in a safe condition at all times by HAMMOCKS. HAMMOCKS shall maintain the landscaping within the Existing Parking Area only, at its sole expense, but this obligation shall not include installation and replacement of the aforementioned features. HAMMOCKS shall maintain the lighting within the Existing Parking Area, only, consisting of replacement of light bulbs, repair of any damaged lighting masts or replacement of any light masts if they are not repairable. Maintenance shall also include ensuring that area residents do not leave vehicles parked during Closed Hours (as defined in Article IV below) on COUNTY Premises, and, if such use is identified, taking all necessary actions to have the vehicle physically removed from COUNTY Premises, including having such vehicles towed consistent with applicable law. HAMMOCKS shall be entitled to enter and to use the improvements on COUNTY Premises and to perform necessary maintenance.

C. Hammocks and County

Should either party need to close any or all of the cross access area or the parking lots for scheduled or emergency maintenance such party shall use reasonable care to notify the other party in advance of such closure. This shall require the party taking such action to notify the other party at

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least thirty (30) days in advance of any and all maintenance that will adversely impact parking use, provided that the maintenance is not necessitated by an emergency situation, at which point the party taking action shall provide the other party with notice as may be reasonably possible. However, in no event shall HAMMOCKS be permitted to close any portion of the COUNTY PREMISES without the prior express, written consent of the COUNTY, unless closure before obtaining such written consent from the COUNTY is necessary to safeguard against possible harm and/or liability arising from an emergency condition or situation located in or about the Hammocks Premises. In the event of such an emergency condition or situation, HAMMOCKS shall provide concurrent or prior notice to the COUNTY park manager or COUNTY park manager's office.

ARTICLE IV **UNAUTHORIZED PARKING**

HAMMOCKS shall be responsible for enforcing unauthorized parking on COUNTY Premises parking area Monday through Sunday, from 1:00 AM until sunrise ("Closed Hours"). Vehicles, other than COUNTY vehicles, found parked during Closed Hours on COUNTY Premises, when necessary, shall be towed by HAMMOCKS, at no expense to COUNTY, all in accordance with the requirements of applicable law. Solely for the purposes of towing vehicles, HAMMOCKS shall be considered the authorized agent or representative of the COUNTY. COUNTY shall install a towing sign authorizing such action, consistent with County Code requirements, at the front of Tract

HAMMOCKS shall be entitled to have towed any and all unauthorized vehicles on COUNTY Premises only during Closed Hours. If HAMMOCKS at any time chooses to no longer enforce such unauthorized parking on COUNTY Premises or the Proposed Parking Area, then HAMMOCKS, upon reasonable notice to the COUNTY, shall confer with COUNTY to evaluate other options to insure that no unauthorized parking takes place on COUNTY parking areas.

ARTICLE V **COUNTY INSPECTION**

As further part of this Agreement, it is hereby understood and agreed that any official inspector of COUNTY or its agents duly authorized, may have the privilege at any time of entering and inspecting the use of HAMMOCKS Premises parking to determine whether HAMMOCKS is complying with the requirements of this Agreement and the conditions herein. COUNTY will notify HAMMOCKS of any concerns or problems identified in connection with such inspection within a reasonable period of time after each respective inspection, and both parties shall work together to remedy such problems or concerns as soon as practicable.

ARTICLE VI **INDEMNIFICATION**

To the extent permitted by law, HAMMOCKS shall indemnify and hold harmless the COUNTY and its officers, employees, agents and instrumentalities from any and all liability, losses, and damages, including attorney's fees and costs of defense, which COUNTY may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the HAMMOCKS and

HAMMOCKS shall defend the COUNTY, including any and all appellate actions, in any such actions or proceedings whether in the name of the COUNTY or otherwise. However, nothing herein shall be deemed to indemnify the COUNTY from any liability or claim arising out of the negligent performance and/or failure of performance of COUNTY or any unrelated third party.

The COUNTY does hereby agree to indemnify and hold harmless HAMMOCKS to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of the Statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the COUNTY arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the COUNTY. However, nothing herein shall be deemed to indemnify HAMMOCKS from any liability or claim arising out of the negligent performance and/or failure of performance of HAMMOCKS or any unrelated third party.

ARTICLE VII **DEFAULT AND CURE**

If HAMMOCKS violates a term or condition of this Agreement, HAMMOCKS shall be deemed to be in default of this Agreement. Upon knowledge of a purported violation of this Agreement by HAMMOCKS, COUNTY shall provide HAMMOCKS with written notice of the action or condition which purportedly caused the default. HAMMOCKS shall, within forty-five (45) days of receipt of written notification from COUNTY of the HAMMOCKS default: (a) cure the default; or (b) if the default is one that cannot be reasonably cured within forty-five (45) days, provide the COUNTY with a written response within forty-five (45) days after receiving said written notification indicating the reason(s) HAMMOCKS cannot correct the violation within the forty-five (45) days and specify the corrective course of action HAMMOCKS plans to take, when such corrective measures will begin and how much time it will take to accomplish the corrective measures. Moreover, HAMMOCKS shall begin to diligently cure such default within such forty-five (45) day period and continue to diligently prosecute such cure. If HAMMOCKS fails within forty-five (45) days to (a) correct a default or (b) diligently pursue and/or execute the cure of a default and provide a written response, as applicable, COUNTY and HAMMOCKS shall have an additional forty-five (45) days from the expiration of the initial forty-five (45) day period to meet and attempt to reach a resolution to the default before the COUNTY may elect to terminate this Agreement or to exercise any and all other rights it may have in law or in equity, including any action to enforce the provisions of this Agreement.

If COUNTY violates a term or condition of this Agreement, COUNTY shall be deemed to be in default of this Agreement. Upon knowledge of a purported violation of this Agreement by COUNTY, HAMMOCKS shall provide COUNTY with written notice of the action or condition which purportedly caused the default. COUNTY shall, within forty-five (45) days of receipt of written notification from HAMMOCKS of the COUNTY default: (a) correct the default; or (b) if the default is one that cannot be reasonably cured within forty-five (45) days, provide HAMMOCKS with a written response within forty-five (45) days after receiving said written notification indicating the reason(s) the COUNTY cannot correct the violation within the forty-five (45) days and specify the corrective course of action COUNTY plans to take, when such corrective measures will begin and

how much time it will take to accomplish the corrective measures. Moreover, COUNTY shall begin to diligently cure such default within such forty-five (45) day period and continue to diligently prosecute such cure. If the COUNTY fails within forty-five (45) days to (a) correct a default or (b) diligently pursue and/or execute the cure of a default and provide a written response, as applicable, COUNTY and HAMMOCKS shall have an additional forty-five (45) days from the expiration of the initial forty-five (45) day period to meet and attempt to reach a resolution to the default before HAMMOCKS may elect to terminate this Agreement or to exercise any and all other rights it may have in law or in equity, including any action to enforce the provisions of this Agreement.

ARTICLE VIII **AMENDMENTS**

This Agreement may be modified or amended for the COUNTY by the Board of County Commissioners, and for HAMMOCKS by the HAMMOCKS President, through a written instrument mutually executed by COUNTY and HAMMOCKS or its successors and/or assigns. Amendments shall not include a provision for the parking of HAMMOCKS security vehicles on COUNTY Premises overnight. Exhibits "1", "3", and "4" cannot be removed or modified without the prior written approval of both parties and in no event can Exhibit "2" be modified or removed.

ARTICLE IX **NO PARTNERSHIP**

Parties are to conduct and operate their business in and upon the COUNTY Premises and HAMMOCKS Premises independently. This Agreement shall not be construed as a partnership agreement, and nothing contained herein shall be construed as having established a partnership and/or joint venture between the parties with respect to the conduct and operation of the COUNTY Premises and HAMMOCKS Premises or establishing a principal and agent relationship between the parties..

ARTICLE X **NON-DISCRIMINATION**

HAMMOCKS, by and through its duly authorized officers, directors, agents and/or employees, does hereby for itself, its officers, directors, agents, employees, its personal representatives, successors-in interest, and assigns, as part of the consideration hereof, covenant and agree that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the COUNTY Premises and/or HAMMOCKS Premises on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap, except as provided by law. In the event of breach of any of the above non-discrimination covenants, the COUNTY shall have the right to terminate the Agreement, in accordance with Article VII.

ARTICLE XI

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver is in writing and approved by the Board of County Commissioners. The failure of either party to insist upon strict performance of any of the provisions or conditions of this Agreement shall be not be construed as waiving or relinquishing in the future such covenants or conditions, but the same shall continue and remain in full force and effect.

ARTICLE XII

SPECIAL EVENTS

It is the intent of the County to notify HAMMOCKS at least thirty (30) days in advance, of any and all Special Events that may be held at the park. "Special Event" shall have the same definition as that contained in Administrative Order 8-5 and for which a Special Events permit has been issued by the COUNTY pursuant to AO 8-5. Special Event shall not include casual park use by visitors or tourists or regularly scheduled park programs, service, picnics, resident gatherings or sport leagues where no reservation of parking spaces is required. The County shall notify HAMMOCKS via e-mail in accordance with the notice provisions contained herein.

ARTICLE XIII

MISCELLANEOUS

Invalidation of any one of the provisions of this Agreement by judgment of a court of competent jurisdiction shall not affect any of the other provisions which shall remain in full force and effect.

The parties shall comply with all applicable laws, rules, regulations, ordinances and codes of federal, state and local governments. This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for all disputes shall be in Miami-Dade County, Florida. In the event of litigation between the parties, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. This provision shall survive termination of this Agreement.

All rights, remedies and privileges granted herein shall be deemed to be cumulative, and the exercise of any one or more rights, remedies and/or privileges shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

ARTICLE XIV **NOTICES**

For the purposes of this Agreement, the contracting representatives shall provide notices as follows:

| | |
|--|---|
| <u>For County:</u> County Mayor Miami-Dade County 111 NW 1 st Street, 29FL Miami, FL 33128 | <u>For Hammocks:</u> Don Kearns, President Hammocks Community Assoc. Inc. 9020 Hammocks Blvd. Miami, FL 33196 dkearns@att.net |
|--|---|

| | |
|---|--|
| <u>Copy:</u> Director Parks, Recreation and Open Space Dept. 275 NW 2 nd Street, 5 FL Miami, FL 33128 | <u>Copy:</u> Emily Koshar, Members Services Manager Hammocks Community Assoc. Inc. 9020 Hammocks Blvd. Miami, FL 33196 emmy@hammockscommunity.com |
|---|--|

All notices given or required under this Agreement shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of parties specified in this Agreement, unless parties shall specify in writing a different address for the giving of notices.

ARTICLE XV **INSURANCE**

HAMMOCKS will maintain throughout the period of this Agreement and declaration Comprehensive General Liability insurance, All Risk insurance, Commercial Liability Insurance, and coverage for legal liability for loss or damage to COUNTY Premises arising from negligence of HAMMOCKS employees or agents. The policies shall have minimum limits no less than \$1,000,000.00, and must name the COUNTY as an additional insured.

ARTICLE XVI **SIGNATORY AUTHORITY**

The officials executing this Agreement warrant and represent that they are authorized by their respective agency to enter into this Agreement.

ARTICLE XVII **COUNTY AS SOVEREIGN**

HAMMOCKS and the COUNTY expressly understand and agree that notwithstanding any provision of this Agreement and the County's status thereunder:

- (a) The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped or otherwise prevented from withholding or refusing to issue any approvals of applications for

building, zoning, planning, or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and/or improvement of the COUNTY Premises or HAMMOCKS Premises or the occupancy or operation thereof, or be liable for the same; and

- (b) The County shall not by virtue of this Agreement be obligated to grant to HAMMOCKS any approvals of applications for building, zoning, planning, or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the HAMMOCKS Premises and/or the COUNTY Premises.

Any County covenant or obligation that may be contained in this Agreement, including but not limited to the following:

- (a) To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist, HAMMOCKS, regardless of the purpose required for such cooperation;
- (b) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;
- (c) To apply for or assist HAMMOCKS in applying for any county, city or third party permit, or needed approval; or
- (d) To contest, defend against, or assist HAMMOCKS in contesting or defending against any challenge of any nature;

shall not bind the Board of County Commissioners, the Regulatory and Economic Resources Department (RER), or any other county, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police powers; and the County shall be released and held harmless, by HAMMOCKS from any liability, responsibility, claims, consequential or other damages, or losses to HAMMOCKS, or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. The County shall have no obligation to approve, in whole or in part, any application for any type of entitlement, variance, accommodation, waiver, etc. The County's obligation to use reasonable good faith efforts in the processing and obtaining of such matters shall not extend to any exercise of quasi-judicial powers, regulatory authority and/or police powers, and shall be limited solely to discretionary ministerial actions, not including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the County to adopt or approve any application, process any matter in a timely manner, and/or provide any type of payment or reimbursement be construed as a breach or default of this Agreement.

Notwithstanding anything else contained herein to the contrary, the County hereby acknowledges that, for so long as this Agreement remains in effect, HAMMOCKS satisfies condition No. 10 of Resolution 4-ZAB-368-87, passed September 23, 1987 (attached hereto as Exhibit "2"), which requires, as a condition for approval of a non-use variance of parking requirements, that HAMMOCKS enter into a cross-parking and cross-access agreement to tie a

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private park facility together with a public park facility to the north to insure a total of 58 available parking spaces.

IN WITNESS WHEREOF, Miami-Dade County and Hammocks Community Association Incorporated, have caused theses presents to be executed in their respective names, by proper officials, the day and year first above written.

Attest:

**HAMMOCKS COMMUNITY
ASSOCIATION INCORPORATED**, a non-
profit corporation of the State of Florida

By: [Signature]
President

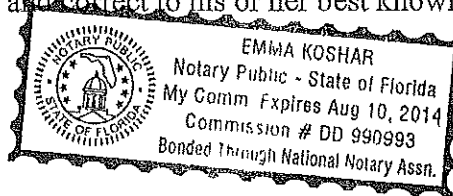
STATE OF FLORIDA }
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this 25 day of June 2013, by Don Kearns, who is personally known and who being duly sworn, deposes and says that the aforementioned is true and correct to his or her best knowledge.

[SEAL]

Notary Public:
Commission:

[Signature]
8/10/14



Attest:

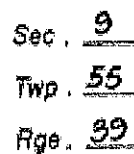
MIAMI-DADE COUNTY, FLORIDA, a
political subdivision of the State of Florida

By: _____
County Mayor

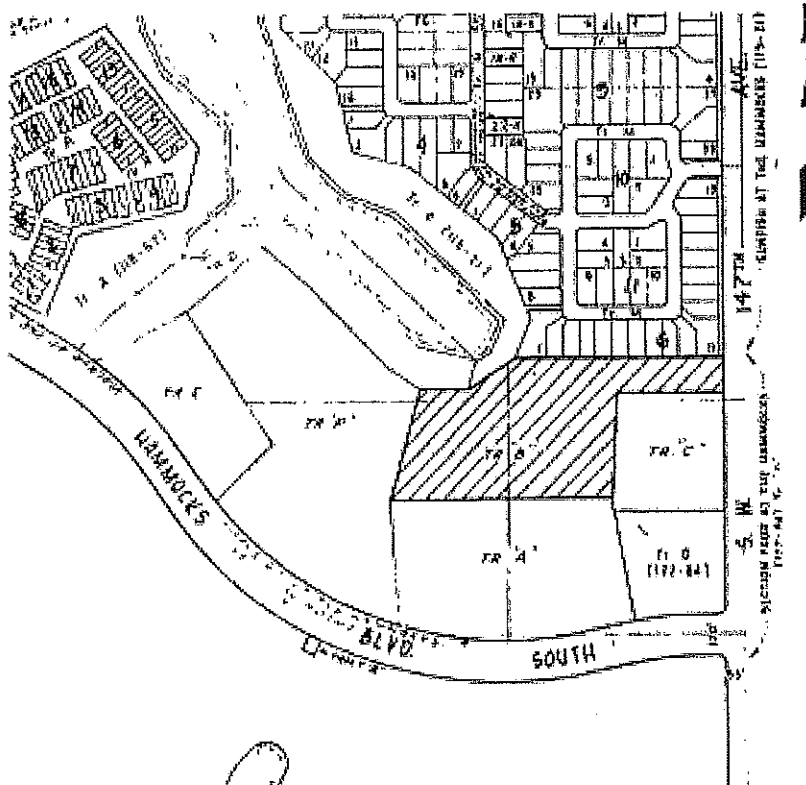
County Attorney review for
Legal sufficiency

County Clerk

Platted Parcel Map



LOCATION MAP



LEGEND

☒ Park Site to be Accepted'

Exhibit "2"
Zoning Resolution

METROPOLITAN DADE COUNTY, FLORIDA



METRO-DADE CENTER

BUILDING & ZONING DEPARTMENT
METRO-DADE CENTER
111 N.W. FIRST STREET
SUITE 1010
MIAMI, FLORIDA 33128-1874
(305) 375-2500

November 16, 1987

GENSTAR DEVELOPMENT
9280 HAMMOCK BOULEVARD, #101
MIAMI, FL 33196

RE: Hearing No. 87-9-74

Gentlemen:

Enclosed herewith is a copy of Resolution No. 4-2AB-368-87, adopted by the Metropolitan Dade County Zoning Appeals Board, approving your application.

Once the use has been established, failure to maintain compliance with any of the required conditions will result in the immediate issuance of a civil violation notice for each condition violated. Each ticket issued will require payment of a daily monetary fine in the amount of \$500.00.

Please note the conditions under which said approval was granted, inasmuch as strict compliance therewith will be required. If there are any anticipated changes from the plan submitted for the hearing a plot use plan should be submitted to this office in triplicate before any detailed plans are prepared, inasmuch as building permits will not be issued prior to the approval of said plan.

It is necessary that you apply for a Certificate of Use and Occupancy at the Zoning Information Counter of the Building and Zoning Department in order to meet the requirements of the approved Resolution. It is then automatically renewable annually by this Department.

You are hereby advised that the decision of the Zoning Appeals Board may be appealed by an aggrieved party (within 14 days) or by the Directors of the Dade County Building and Zoning Department and Planning Department (within 18 days), as is provided in Chapter 33-313 of the Code of Metropolitan Dade County, Florida; and that no permits or Certificates of Use and Occupancy can be issued until the appeal periods have expired, and only if no appeal has been filed. Application for necessary permits and/or Certificate of Use and Occupancy permits should be made with this Department.

Very truly yours,

Chester C. Czobringki
Assistant Director

CCC:cj

Enclosure: Planning Dept.

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Exhibit "2" (cont.)
Zoning Resolution

9-55-30/87-423

RESOLUTION NO. 4-ZAB-368-87

The following resolution was offered by Mr. Kenneth Walt seconded by Mrs. Mary Jean Risi and upon poll of members present, the vote was as follows:

| | | | |
|--------------------|--------|-----------------------|-----|
| Thomas A. Conger | aye | Gonzalo (Guy) Sanchez | aye |
| Levi A. Johnson | aye | Murray Siegalman | aye |
| Joyce Hassel | aye | Kenneth Walt | aye |
| Margaret C. Nelson | absent | R. Jolivet Frazier | aye |
| Mary Jean Risi | aye | | |

WHEREAS, GENSTAR DEVELOPMENT has applied for the following:

- (1) UNUSUAL USE to permit a private playground and recreational area including a swimming pool and pavilion, tennis courts, racquetball courts, tot play area and entry and activity pavilion.
- (2) NON-USE VARIANCE OF SETBACK REQUIREMENTS to permit the proposed facility setback 20' (50' required) from the front (east) property line, setback 10' (15' required) from the side (south) property line, and setback varying from 15' to 23' (25' required) for the pool/activity pavilion from the rear (west) property line.
- (3) NON-USE VARIANCE OF PARKING REQUIREMENTS to permit 24 parking spaces (42 spaces required).
- (4) SPECIAL EXCEPTION to permit night lighting of the tennis courts and racquetball courts.
- (5) NON-USE VARIANCE OF LOT AREA REQUIREMENTS to permit the recreational site with an area of 2.56 acres (5 acres required).

Plans are on file and may be examined in the Zoning Department entitled "Wild Iona Park", as prepared by Rosenberg Design Group, dated revised 6-17-87. Plans may be modified at public hearing.

SUBJECT PROPERTY: Tract "C" of PARKSIDE AT THE HAMMOCKS, Plat book 131, Page 71.

LOCATION: The west side of S.W. 147 Avenue, 350' north of Hammock Lakes Boulevard, Dade County, Florida, and

WHEREAS, a public hearing of the Metropolitan Dade County Zoning Appeals Board was advertised and held, as required by law, and all interested parties concerned in the matter were heard, and

WHEREAS, upon due and proper consideration having been given to the matter it is the opinion of the Board that the requested unusual use, non-use variances of setback requirements, parking requirements and lot area requirements and special exception would be in harmony with the general purpose and intent of the regulations, would be compatible with the area and its development and would conform with the requirements and intent of the Zoning Procedure Ordinance;

NOW THEREFORE BE IT RESOLVED by the Metropolitan Dade County Zoning Appeals Board, that the requested unusual use, non-use variances of setback requirements, parking requirements and lot area requirements and special exception be and the same are hereby approved, subject to the following conditions:

Exhibit "2" (cont.)
Zoning Resolution

4-4411-368-B7

Page Two

9-55-39

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1. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things but not be limited thereto, location of building or buildings, tennis courts, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled, "Wild Limo Park", as prepared by Rosenberg Design Group, dated revised 6-17-87.
3. That the tennis court chain link fencing will be surfaced with a permanent green or brown vinyl type coating, or will be erected with a permanent, full-covering earthen hue tennis court screen netting.
4. That the applicants submit to the Planning Department for its review and approval a landscaping plan which indicates the type of plant material and vice prior to the issuance of a building permit and to be installed prior to the issuance of a certificate of use and occupancy.
5. That the night lighting for the proposed tennis courts shall be designed so that any over-spill of lighting onto adjacent properties shall be limited to not exceed one-half (1/2) foot candle power (horizontal) and one-half (1/2) foot candle power (vertical) and shall not cause any reflected illumination onto adjacent properties or structures. Installations shall not be finalised-out until on-site inspection with installation in operation has been made to assure adjustment and shielding conforms to requirements as set forth.
6. That the use be established and maintained in accordance with the approved plan.
7. That the tennis court lights be turned off at or before 10 P.M. nightly.
8. That no exterior music or public address system shall be used in connection with the tennis courts or other activities.
9. That the applicants obtain a Certificate of Use and Occupancy from the Dade County Building and Zoning Department, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions, or, when in the opinion of the Metropolitan Dade County Zoning Appeals Board, after public hearing, it is determined that the use is detrimental to and/or incompatible with the surrounding neighborhood.
10. That a cross parking and cross access agreement be submitted by the applicants to this Department, in a form suitable for recording, which meets with the approval of the Zoning Director, to be recorded prior to issuance of a Certificate of Use and Occupancy. The agreement shall tie together parking to the north to insure a total of 50 available parking spaces prior to valid occupancy certificate issuance.

The Zoning Director is hereby directed to make the necessary notations upon the maps and records of the Dade County Building and Zoning Department and to issue all permits in accordance with the terms and conditions of this resolution.

PASSED AND ADOPTED this 23rd day of SEPTEMBER, 1987.

Hearing No. 87-9-74
Typed 10/8/87 oJ

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Exhibit "3"
Tract C Parking

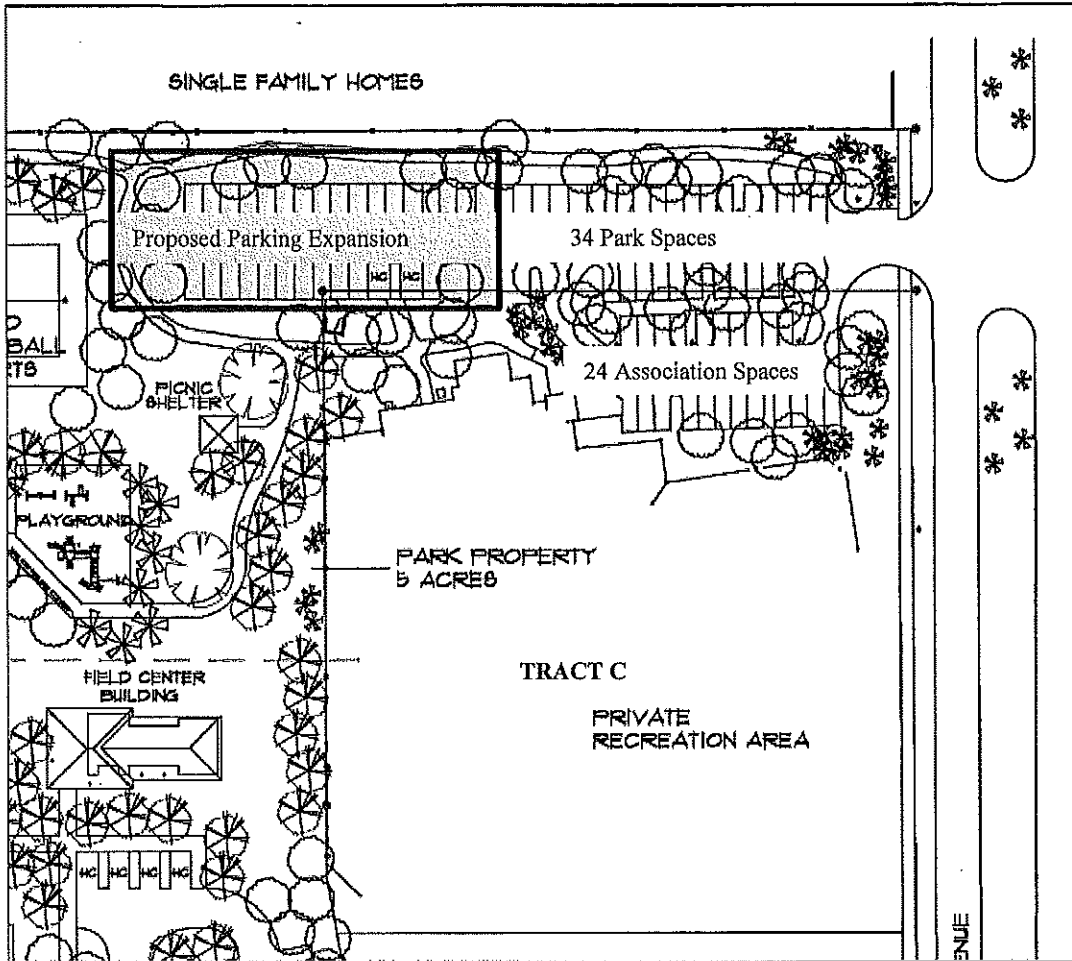


Exhibit "4"
Public Park Parking Areas

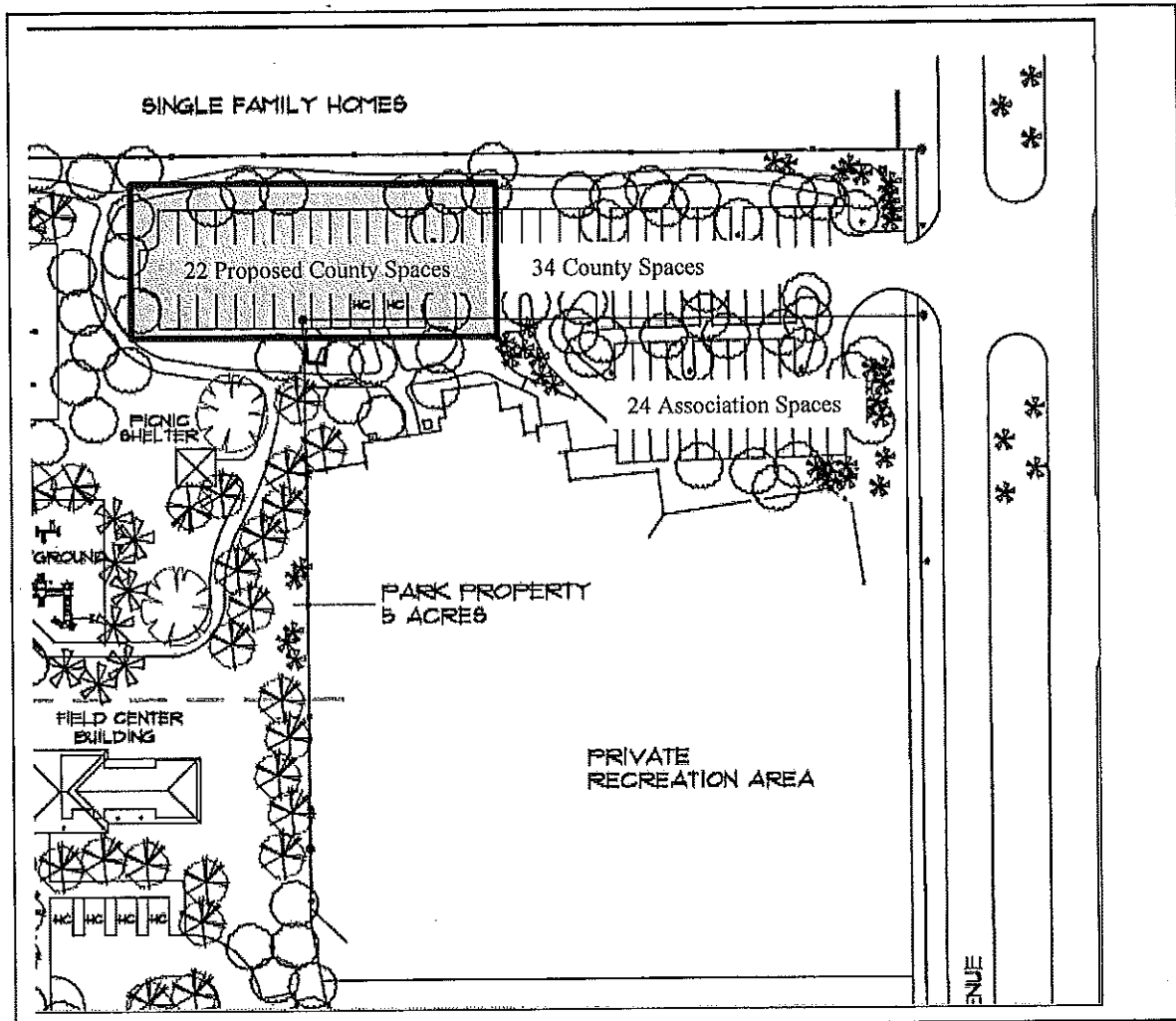
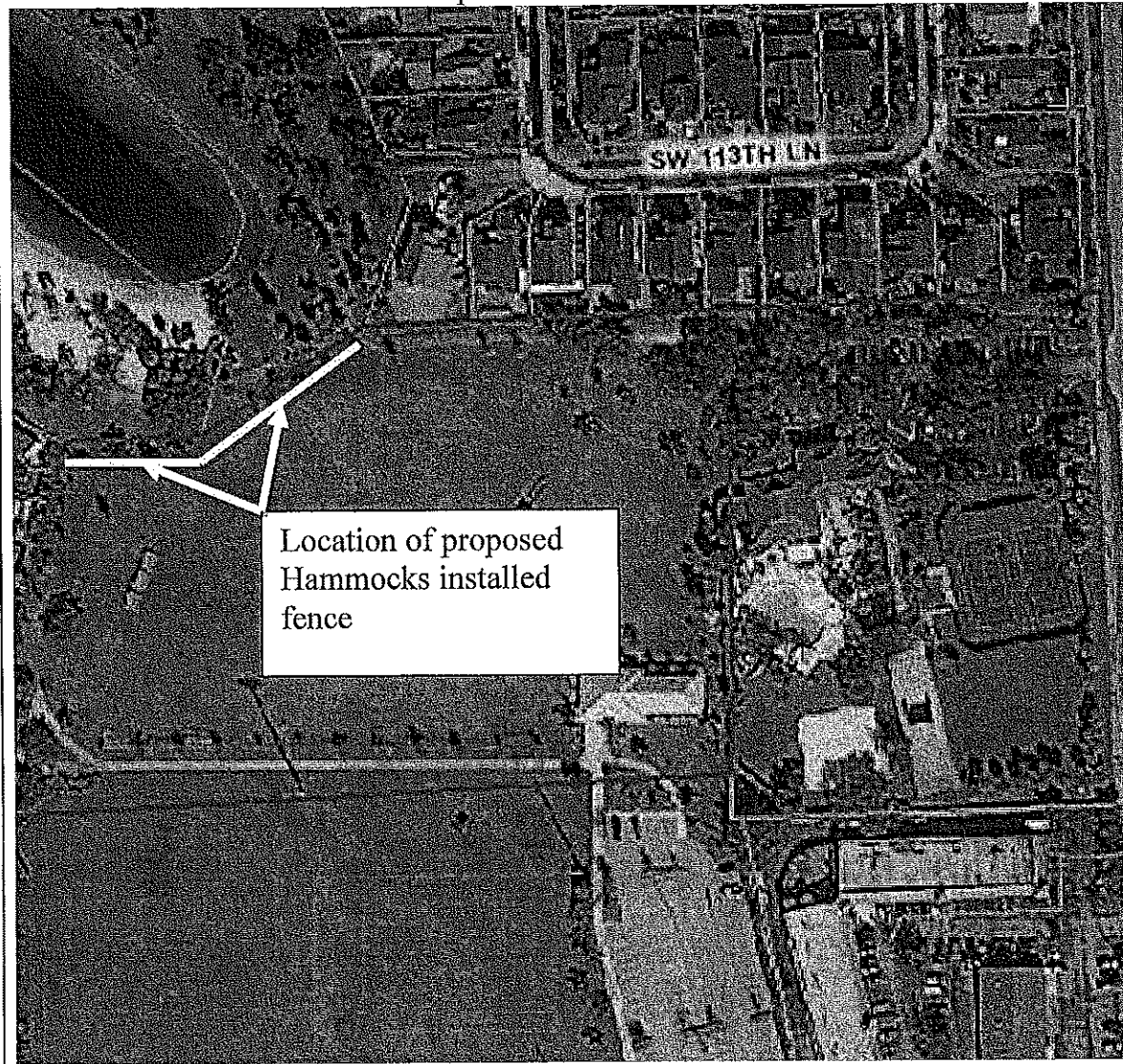


Exhibit "5"
Proposed Fence Location



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Exhibit "6"
Easement

EASEMENT

| | |
|---|--|
| | <u>This Instrument Prepared By</u> |
| Sec <u>09</u> Twp <u>55</u> Rge <u>39</u> | Name: Kevin Asher |
| | Co. Name: Miami Dade County Park & Recreation |
| Folio No. 30-5909-019-0020 | Address: 275 NW 2 nd Street 5 th Floor Miami, FL 33128 |

Reserved for Recording

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Hammocks Community Association, Incorporated (Hammocks), its owners/residents, their guests and invitees, along with licensees, agents, successors, and assigns, a non-exclusive easement for vehicular and pedestrian access and egress through Miami-Dade County (County) Wild Lime Park, 14751 Hammocks Boulevard, within the following described property: a variously 16-foot wide area known as "Hammocks Community Association Access Easement" and described in "Exhibit A" below:

Exhibit A
Sketch and Legal Description
Hammocks Community Association Easement

In accordance with the Plat recorded for Miami-Dade County Wild Lime Park (Parkside at the Hammocks PB 131-71), and Zoning Resolution No. 4-ZAB-368-87, recorded for the adjacent Hammocks Wild Lime Center (Folio 30-5909-019-0030), together with the right to allow any person, firm or corporation access through the easement and to operate the same solely for purposes of entry access; the rights herein above granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on _____, 2013.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor of said Board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

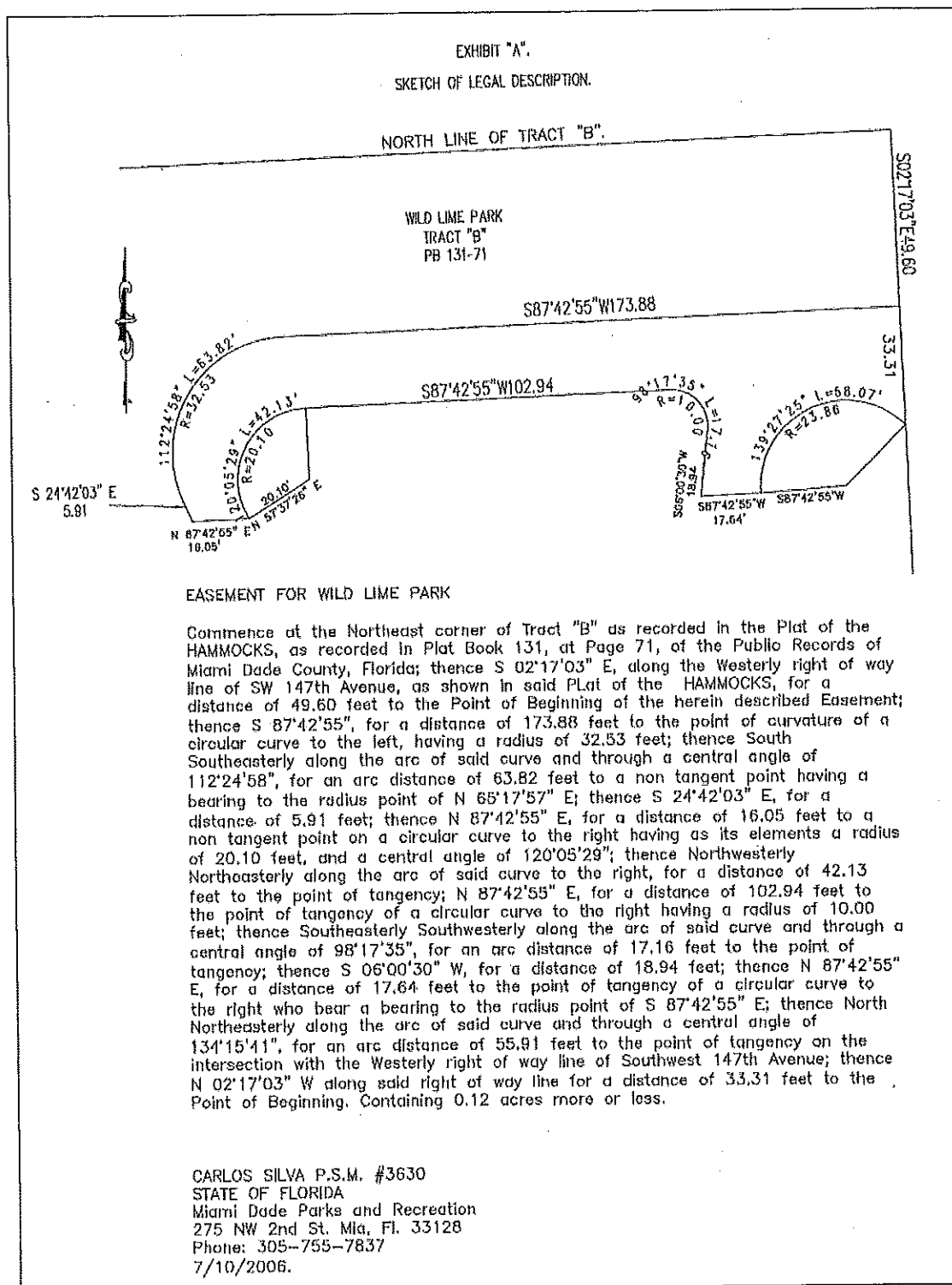
By: _____
Deputy Clerk

By: _____
County Mayor

The foregoing was authorized and approved by Resolution No. _____ of the Board of County Commissioners of Miami-Dade County, Florida, on the _____ day of _____, 2013.

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Exhibit A
Sketch and Legal Description
Hammocks Community Association, Incorporated Easement



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Attachment B
Easement

EASEMENT

This Instrument Prepared By

Sec 09 Twp 55 Rge 39

Name: Kevin Asher
Co. Name: Miami Dade County
Parks, Recreation and
Open Spaces Dept.
Address: 275 NW 2nd Street
5th Floor
Miami, FL 33128

Folio No.
30-5909-019-0020

Reserved for Recording

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Exhibit A Sketch and Legal Description Hammocks Community Association Easement

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(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
County Mayor

The foregoing was authorized and approved by Resolution No. _____ of the Board of County Commissioners of Miami-Dade County, Florida, on the _____ day of _____, 2013.

Exhibit A
Sketch and Legal Description
Hammocks Community Association Easement

